

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**JEFFERY A. STALLWORTH**

**PLAINTIFF**

**V.**

**CASE NO. 3:16-CV-00578-HTW-LRA**

**EAST METRO CORRIDOR COMMISSION, and  
THE MISSISSIPPI TRANSPORTATION COMMISSION**

**DEFENDANTS**

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**RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE  
TO AMEND THE COMPLAINT, OR, IN THE ALTERNATIVE,  
TO DISMISS WITHOUT PREJUDICE**

COMES NOW the Mississippi Transportation Commission/Mississippi Department of Transportation and files this response to the plaintiff's motion for leave to amend or, in the alternative, to dismiss without prejudice his complaint.

1. Pending before the Court is a motion to dismiss the complaint filed by the defendant herein, filed on August 18, 2016 (Document 43). Filed in conjunction with the motion to dismiss is a memorandum brief in support of the motion, also filed August 18, 2016 (Document 44). The plaintiff, Jeffery Stallworth, has not yet filed a response to the motion to dismiss or a response to the memorandum filed in support of the motion to dismiss.

2. The filings of the motion for leave to amend and a notice of dismissal are attempts by the plaintiff to circumvent the Federal Rules of Civil Procedure. Rule 15 of the Federal Rules of Civil Procedure clearly states that a party may amend its pleading only with the opposing party's written consent or the Court's leave, after a responsive pleading has been filed. The Mississippi Transportation Commission's answer to the complaint was filed June 20, 2016 (Document 8).

3. Even if the Court were to consider the motion for leave to amend, it is clear from the allegations stated in the motion for leave to amend that the plaintiff has repeated the allegations

in his original complaint. No new specific allegations have been alleged.

4. Should the Court decide to consider the motion for leave to amend, the defendant, Mississippi Transportation Commission, reserves the right to file a detailed memorandum opposing the motion for leave to amend.

5. Because the motion to dismiss filed by the Mississippi Transportation Commission is a dispositive motion in this case, the Court should not consider the motion for leave to amend.

WHEREFORE, the defendant, Mississippi Transportation Commission/Mississippi Department of Transportation, requests that the Court deny consideration of the plaintiff's motion for leave to amend or, in the alternative, to dismiss without prejudice.

Respectfully submitted on this the 10<sup>th</sup> day of November, 2016.

MISSISSIPPI TRANSPORTATION COMMISSION

JIM HOOD, ATTORNEY GENERAL

/s/ Daniel B. Smith

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## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document has been filed with the Clerk of the Court via the Court's ECF system and thereby served upon all counsel of record who have entered their appearance in this action. I further certify that the foregoing document has been served upon the following person via U. S. Mail properly addressed and postage prepaid.

Jeffery Stallworth  
6286 Hanging Moss Rd.  
Jackson MS 39206

This the 10<sup>th</sup> day of November, 2016.

/s/ Daniel B. Smith